

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

TOM MURRAY,

Plaintiff,

vs.

No. CV 21-01001 JCH/SCY

UNITED STATES, and  
INTERNAL REVENUE SERVICES,

Defendants.

**MEMORANDUM OPINION AND ORDER**

THIS MATTER is before the Court under Fed. R. Civ. P. 41(b) on Plaintiff's Motion to Compel Internal Revenue Service to Respond filed by Plaintiff Tom Murray. (Doc. 1). The Court has construed Plaintiff's Motion as a civil complaint and will dismiss the case for failure to comply with Court orders, failure to comply with statutes, and failure to prosecute.

Plaintiff Tom Murray is an incarcerated prisoner. He filed the complaint on October 15, 2021. (Doc. 1, Doc. 3 (redacted)). In response to an Order to Cure Deficiency, Murray submitted an application to proceed under § 1915 on October 25, 2021. (Doc. 5). The Court granted the application to proceed *in forma pauperis* on November 19, 2021. (Doc. 6). The Court also required Plaintiff Murray to make an initial partial payment of \$33.38 or show cause why he should not be required to make the payment within 30 days of entry of the Order. (Doc. 6 at 1). Plaintiff Murray did not make the initial partial payment and did not respond to the Court's November 19, 2021, Order.

On March 29, 2022, the Court entered an Order directing Plaintiff Murray to show cause why the case should not be dismissed for failure to comply with the Court's November 19, 2021 Order to make an initial partial payment. (Doc. 7). The Order to Show Cause notified Plaintiff

Murray that, if he did not show cause within 30 days, the case could be dismissed for failure to prosecute. (Doc. 7 at 2). More than 30 days has elapsed since entry of the March 29, 2022, Order and Plaintiff Murray has not paid the \$33.38 initial partial payment, has not responded to the Court's March 29, 2022 Order, and has not communicated with the Court since October 25, 2021.

When a prisoner is granted leave to proceed *in forma pauperis*, § 1915 provides:

“The court **shall** assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of (A) the average monthly deposits to the prisoner's account; or (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.”

28 U.S.C. § 1915(b)(1) (emphasis added). Plaintiff Murray was ordered to make the required partial payment under § 1915(b)(1) or show cause but has failed to comply with the Court's Orders.

The Court may dismiss an action under Fed. R. Civ. P. 41(b) for failure to prosecute, to comply with the rules of civil procedure, or to comply with court orders. *See Olsen v. Mapes*, 333 F.3d 1199, 1204, n.3 (10<sup>th</sup> Cir. 2003). Plaintiff Murray has not complied with the Court's November 19, 2021 and March 29, 2022 Orders, has not complied with the statutory requirements of 28 U.S.C. §§ 1914 and 1915, and has failed to prosecute this case.

IT IS ORDERED that Plaintiff's Motion to Compel Internal Revenue Service to Respond filed by Plaintiff Tom Murray (Doc. 1), which the Court has construed as a civil complaint, is **DISMISSED without prejudice** under Fed. R. Civ. P. 41(b) for failure to comply with Court orders, failure to comply with statutes, and failure to prosecute this proceeding.

  
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SENIOR UNITED STATES DISTRICT JUDGE